local decrees of alimony are not treated as final judgments for procedural purposes, there seems to be no good reason why those of foreign jurisdictions should not be enforced. *Cf. Nunn* v. *Nunn, supra.*

MARRIAGE—ANNULMENT—INNOCENT MISREPRESENTATION AS TO ABILITY TO PROCREATE.—The defendant, after a superficial examination by a doctor at the request of the plaintiff, induced her to marry him by falsely, but innocently, representing that he was able to procreate. The plaintiff seeks to have equity annul the marriage on the ground of fraud. *Held,* complaint dismissed, two judges dissenting. *Chavias* v. *Chavias* (N. Y. App. Div. 2nd Dept. 1920) 64 N. Y. L. J. 533.

Marriage is a civil contract. *Great Northern Ry.* v. *Johnson* (C. C. A. 1918) 254 Fed. 683; *Coleman* v. *Coleman* (1917) 85 Ore. 99, 166 Pac. 47; N. Y. Cons. Laws (1909) c. 19, §10. Equity will rescind an ordinary civil contract induced by an innocent misrepresentation of a material fact. *Independent Harvester Co.* v. *Tinsman* (C. C. A. 1918) 253 Fed. 935; *Canadian Agency, Ltd.* v. *Assets R. Co.* (1914) 165 App. Div. 96, 150 N. Y. Supp. 758. But the annulment of a marriage involves considerations of public policy not applicable to ordinary civil contracts. *Barker* v. *Barker* (1914) 88 Misc. 300, 151 N. Y. Supp. 811, *affd.* 182 App. Div. 929. And the inherent jurisdiction of equity to annul a marriage is confined to causes of fraud or duress. See *Ridgley* v. *Ridgley* (1894) 79 Md. 298, 29 Atl. 597. In New York fraud and physical incapacity to enter into the married state are statutory grounds for annulment. N. Y. Cons. Laws (1909) c. 19, §7. But mere sterility is not "physical incapacity" within the meaning of the statute. *Schroter* v. *Schroter* (1907) 56 Misc. 69, 106 N. Y. Supp. 22. In an ordinary transaction, a false statement, based merely on honest belief, but made as of knowledge and intended so to be accepted, may amount to fraud. *Hadcock* v. *Osmer* (1897) 153 N. Y. 604, 47 N. E. 923; see *Rochester Bridge Co.* v. *McNeill* (1919) 188 Ind. 432, 439, 122 N. E. 662. But where the subject-matter or the situation of the parties is such that the statement can be interpreted only as an expression of opinion, there is no fraud. See *Hodgkins* v. *Dunham* (1909) 10 Cal. App. 690, 705, 103 Pac. 351. And even where a mere statement of belief may be accepted as an expression of knowledge, *scienter* is necessary to constitute fraud sufficient for the annulment of a marriage. *Gumbiner* v. *Gumbiner* (1911) 72 Misc. 211, 131 N. Y. Supp. 85, *affd.* 146 App. Div. 914; *cf. Kaufman* v. *Kaufman* (1916) 86 N. J. Eq. 132, 97 Atl. 490. Hence, even if it be granted that the plaintiff was warranted in accepting the defendant's statement as an expression of knowledge, the absence of *scienter* justifies the decision in the principal case. Cf. *Schroter* v. *Schroter, supra.*

MUNICIPAL CORPORATIONS—USE OF STREETS FOR PRIVATE PURPOSES.—The City of Buffalo licensed news stands which were obstructions on the highway. The plaintiff, showing no other interest than that of an ordinary citizen, instituted mandamus proceedings to have them removed. The court granted the writ on the ground that the city could not authorize such obstructions for private purposes without legislative authority. *People ex rel. Hofeller* v. *Buck et al.* (App. Div. 4th Dept. 1920) 184 N. Y. Supp. 210.

Municipal corporations may license certain obstructions of their streets for private purposes under legislative sanction. *State* v. *Stoner* (1906) 39 Ind. App. 104, 79 N. E. 399; *People ex rel. Pumpyansky* v. *Keating* (1901) 168 N. Y. 390, 61 N. E. 637. They are powerless, however, to make lawful by ordinance those obstructions for private purposes which are unlawful in the absence of legislative enactment. *Reimer's Appeal* (1882) 100 Pa. St. 182; *People* v. *Harris* (1903) 203 Ill. 272, 67 N. E. 785; *Costello* v. *State* (1895) 108 Ala. 45, 18 So. 820. If an encumbrance be placed in the highway under such conditions, it is a crime as well